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Trustee for Santoro Family Trust UTD 4/29/02

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No.: BK-S-06-10725-LBR

CHAPTER 11

**RESPONSE TO MOTION TO
WITHDRAW MOTION TO ALLOW
CLAIMS BASED UPON INVESTMENT
IN THE COPPER SAGE PHASE II LOAN
[DE 8917]**

AND

**OMNIBUS OBJECTION TO CLAIMS
BASED UPON INVESTMENT IN THE
COPPER SAGE PHASE II LOAN**

Date of Hearing: November 15, 2011

Time of Hearing: 9:30 a.m.

Estimated Time for Hearing: 10 min.

The Santoro Family Trust UTD 4/29/02 ("Santoro Family Trust"), by and through its Trustee, Nicholas J. Santoro, hereby responds to the Motion to Withdraw Motion to Allow Claims Based Upon Investment in the Copper Sage Phase II Loan [DE 8917] and Omnibus Objection to Claims Based Upon Investment in the Copper Sage Phase II Loan. This response is made based upon the below Points and Authorities, the Declaration of Nicholas J. Santoro filed concurrently herewith, and any oral argument that may be permitted at the hearing of this matter.

POINTS AND AUTHORITIES

The USACM Liquidating Trust seeks to withdraw its Motion to Allow Proofs of Claim Based Upon the Investment in the Copper Sage Phase II Loan (“Motion”) because “the Direct Lenders sold their interest in the Copper Sage Phase II Loan to Platinum Properties CS II, LLC (“Platinum”) for value, or had the opportunity to do so, and therefore, recovered (or could have recovered) at least a portion of their investment.” (Motion, page 2, lines 6-9) [Dkt. No. 9331]. With respect to the Santoro Family Trust, this assertion is incorrect. While the Santoro Family Trust negotiated and executed documentation in an attempt to sell its investment to Platinum, the sale was not consummated because Platinum could not fund the purchase. (*See* Declaration of Nicholas J. Santoro filed concurrently herewith.) Thus, the Santoro Family Trust did not receive any value from Platinum for its investment. (*Id.*) The premise for the Motion is incorrect and it should be denied as to the Santoro Family Trust.

Movant alternatively contends that “(a)s for any Direct Lenders who failed to sell their interests, those Direct Lenders failed to mitigate their damages and their claims should disallowed accordingly.” (Motion page 2, lines 9-12). However, the Santoro Family Trust certainly attempted to sell its investment to Platinum for value and thereby mitigate its damages. The only reason such sale was not consummated was because Platinum could not perform. (*See* Declaration of Nicholas J. Santoro filed concurrently herewith.) The Santoro Family Trust cannot be faulted for the failure of the transaction to close. Accordingly, there is no basis for any assertion that the Santoro Family Trust “failed to mitigate (its) damages.”¹

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¹ Other than a bare assertion of “failure to mitigate damages,” the Motion contains no legal or factual support for such a claim and is therefore insufficient to support such a finding.

CONCLUSION

Based upon the foregoing and the Declaration of Nicholas J. Santoro filed contemporaneously herewith, the Santoro Family Trust respectfully requests that the Motion and Objection be denied as to it.

Dated this 1 day of November, 2011.

SANTORO FAMILY TRUST UTD 4/29/02

By: 
NICHOLAS J. SANTORO, TRUSTEE
Nevada Bar No. 0532
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 2011, I caused to be served a true and correct copy of RESPONSE TO MOTION TO WITHDRAW MOTION TO ALLOW CLAIMS BASED UPON INVESTMENT IN THE COPPER SAGE PHASE II LOAN [DE 8917] AND OMNIBUS OBJECTION TO CLAIMS BASED UPON INVESTMENT IN THE COPPER SAGE PHASE II LOAN in the following manner:

☒ (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

☐ (UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

☐ (OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

☐ (FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.

/s/ Nicholas J. Santoro
Nicholas J. Santoro